IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9161 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOLI JERAM VASHRAM,DECEASED BY HIS HEIRS.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9161 of 1997

MR KJ KAKKAD for Petitioner No. 1-2

GOVERNMENT PLEADER for Respondent No. 1-2

..... for Respondent No. 3,7-8,11-19/A 19/C,22

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/07/2004

CAV JUDGEMENT

As a last attempt, what is challenged by the petitioners in the present Special Civil Application is the vires of Rules 76 and 77 of the Saurashtra Land Reforms Rules, 1951 (hereinafter referred to as "the

Rules") as ultra vires the provisions of Sections 19 and 28 of the Saurashtra Land Reforms Act, 1951 (hereinafter referred to as "the Act").

2. At the outset, it may be stated that in the present Special Civil Application vires of Rules 78 and 79 of the Rules are challenged but in the prayer clause Rules 76 and 77 have been mentioned and therefore, leave to amend by substituting Rules 78 and 79 in place of Rules 76 and 77. The present Special Civil Application is to be construed challenging Rules 78 and 79 of the Rules and not Rules 76 and 77 as prayed in the present Special Civil Application.

3. This matter has a checkered history. The petitioners were tenants of agricultural lands situated in the Sim of Village Thebchada of Taluka and District Rajkot. The respondents are the Girasdars as defined in Section 2(15) of the Act which came into force with effect from September 1, 1951. The respondent Girasdars filed an application under Section 23 of the Act for getting Gharkhed lands from the tenants, i.e. petitioners before the Mamlatdar, Rajkot. After holding an enquiry, the Mamlatdar passed an order dated 29th March 1974 granting lands to the respondent Girasdars from the holdings of the petitioner tenants under Section 23 of the Act. The said order was challenged by the petitioners before the Deputy Collector, Rajkot and the order passed by the Mamlatdar, Rajkot dated 29th March 1974 was quashed and set aside and the appeal was allowed. Consequently, the Girasdars were found not entitled to any land from the tenants. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Rajkot dated 9th April 1975 in allowing the appeal and quashing and setting aside the order passed by the Mamlatdar, Rajkot, dated 29th March 1974, a revision application was filed under Section 52 of the Act before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal partly allowed the said revision application by its judgment and order dated 21.1.1976 and remanded the matter to the Deputy Collector, Rajkot for taking appropriate steps in light of the observations made in the impugned decision of the Tribunal. A review petition was also filed by the petitioner tenants before the Tribunal which also came to be dismissed on 8th July 1977. Being aggrieved and dissatisfied with the judgment and orders passed by the Gujarat Revenue Tribunal dated 21.1.1976 and subsequently on the review application on 8.7.1977, a Special Civil Application No. 667 of 1978 came to be filed by the petitioners before this Court under Article 227 of the Constitution of India. This

Court [Coram: Mr. J.N. Bhatt, J.] by its judgment and order dated 15th September 1994 dismissed the aforesaid Special Civil Application considering the provisions of Section 19 and Section 28 of the said Act and Rule 28, Rule 78 and 79 of the Rules. Being aggrieved and dissatisfied with the judgment and order dated 15th September 1994 passed in Special Civil Application No. 667 of 1978, the petitioners had preferred an appeal before this Court being Letters Patent Appeal No. 1177 of 1995 and the same also came to be dismissed by this Court [Coram: Mr. Kshitij R. Vyas and Mr. Akshay Mehta, JJ.] on 24th September 2003 by holding that the Letters Patent Appeal is not maintainable.

4. Thereafter, the petitioners had preferred a Special Leave Petition before Hon'ble Supreme Court of India but the same also came to be dismissed. It is the contention of the petitioners that the said Special Leave Petition was dismissed on the ground of limitation. Be that as it may, the order passed by this Court on 15th September 1994 passed in Special Civil Application No.667 of 1978 is confirmed.

5. As a last attempt on the part of the petitioners, having failed to get any order in their favour, now, the present Special Civil Application has been filed by the petitioners challenging the vires of Rules 78 and 79 of the said Rules as ultra vires the provisions of Sections 19 and 28 read with Section 12 of the said Act and Rule 28(2) of the said Rules.

6. Shri KJ Kakkad, learned advocate appearing on behalf of the petitioners, had submitted that under Section 19 of the Act, the Girasdar was required to make an application before the Mamlatdar for allotment of the land to him for personal cultivation, and he was required to make the application within the prescribed period which period under Rule 12 of the Rules prescribed initially was of 30 days, but thereafter it has been extended and raised upto four months. According to Shri Kakkad, if the application as per Rule 12 is not filed within the prescribed period a duty was cast upon to reject such an application as contemplated in Rule 28 of the Rules. It is the contention on behalf of the petitioners that as the application was made by the petitioners after 4 months, the Girasdars could not have been allotted the land for their personal cultivation. He has further submitted that under Section 28 of the Act a tenant is entitled to move an application for acquiring occupancy rights in his holding and there is a prescribed procedure under Rules 78 and 79 of the Rules. Relying

upon the provisions of the Act, Shri Kakkad has argued that the Girasdars could not have been allotted the land. Considering the provisions of Rules 78 and 79 of the Rules, as the intention of the Legislature is to put an end to the rights of the Girasdars if the applications are not made within a period of 4 months as it was a benevolent act and the lands could not have been given to the Girasdars and therefore according to him Rules 78 and 79 of the Rules are ultra vires the Sections 19 and 28 of the Act read with Section 12 and 28(2) of the said Act.

7. Shri BJ Jadeja, learned advocate appearing on behalf of the respondent Girasdars, had submitted all these points have already been elaborately dealt with by this Court in judgment and order dated 15th September 1994 in Special Civil Application No. 667 of 1978 and therefore now it is not open for the petitioners to challenge the vires of Rules 78 and 79 of the Rules. He has also submitted that Rules 78 and 79 of the Rules are independent proceedings and they are not ultra vires the provisions of Section 19 and 28 of the Act read with Rules 12 and 28 of the Rules.

8. Heard the learned advocates appearing on behalf of the parties. It seems, having failed to get any order in their favour, this is a last attempt on the part of the petitioners by which the petitioners have now challenged Rules 78 and 79 of the Rules as ultra vires the provisions of Section 12 and 28 of the Act. The scope and ambit of Section 19, Section 28, Rule 28 and Rules 78 and 79 are elaborately dealt with and considered by this Court (Coram: J.N. Bhatt, J.) in its judgment and order dated 15th September 1994 passed in Special Civil Application No. 667 of 1978. Therefore, it is not now open for the petitioners to challenge the vires of Rules 78 and 79 of the Rules. This Court has, in the aforesaid judgment dated 15th September 1994, further held that the scope and ambit of Section 19 read with Rule 28 and Section 28, Section 31 read with Rules 78 and 79 are different. Considering the aforesaid provisions, this Court has already held that the orders in favour of the Girasdars are just and proper and in accordance with law. The said judgment and order has become final. It is, therefore, not open for me now to go into the same question again which has become final. Even considering the provisions of the Act and the Rules, Rules 78 & 79 are not in any way ultra vires Section 19 and 28 of the Act read with Rules 12 and 28 of the Rules. Section 19 of the Act deals with allotment of land to the Girasdars for personal cultivation. Section 28 deals with acquisition of occupancy rights by tenants, and detailed

procedure is required to be followed by the competent authority. The petitioners have not pointed out anything as to how the Rules 78 and 79 are ultra vires the provisions of Section 19 and 28 of the said Act. Even otherwise, as stated hereinabove, this Court has already considered the scope and ambit of Section 19 and 28 of the said Act read with Rules 12, 28, 78 and 79 of the Rules and the said judgment and order has become final. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and it is accordingly dismissed. Notice is discharged. Ad-interim relief, if any, stands vacated.

[M.R. Shah, J.]

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